

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

LICENSE NO.: 0404-44-008-003
AGENCY DOCKET NOS.: S-16-37321
H-2016-50703

DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL)

Petitioner)

v.)

RAKESH, INC., t/a JOHNNIE'S LIQUOR)
STORE)

Respondent)

FINAL CONCLUSION AND ORDER
GRANTING SUMMARY DECISION

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BY THE DIRECTOR:

Before me is a motion for Summary Decision filed by the Petitioner, the Division of Alcoholic Beverage Control's Enforcement Bureau, seeking revocation of Respondent Rakesh, Inc.'s liquor license. For the reasons set forth below, I hereby GRANT the Division's motion.

FACTUAL DISCUSSION

By Notice of Charges dated April 4, 2017, the Division of Alcoholic Beverage Control's (the "Division" or "ABC") Enforcement Bureau ("Petitioner") charged the Plenary Retail Distribution License (Lic. No. 0404-44-008-003) issued by Bellmawr Borough in Camden County and held by Rakesh, Inc., t/a Johnnie's Liquor Store ("Johnnie's" or "Respondent/s"), with ten (10) violations:

one (1) violation of N.J.A.C. 13:2-23.5(b) and nine (9) violations of N.J.A.C. 13:2-23.5(c). (Pb1:Exhibit 2).¹

The Division's charges alleged that on May 26, 2016, brothers Rakesh, Dhananjaya and Jalat Patel – who share equally in the ownership interest in the license – allowed, permitted or suffered narcotic drug and controlled dangerous substance (CDS) activities on their licensed premises located at 834-836 West Browning Road in Bellmawr, New Jersey. The Notice stated that the Division would seek revocation of Respondents' license. Ibid. On May 15, 2017, all three Respondents entered "not guilty" pleas to all charges. (Pb1:Exhibit 3).

On September 29, 2017, the Division issued two (2) additional charges of N.J.A.C. 13:2-23.5(b), again seeking revocation. (Pb1:Exhibit 4). On October 4, 2017, Respondent entered a "not guilty" plea to these charges as well. (Pb1:Exhibit 5).

The presumptive penalty for violating N.J.A.C. 13:2-23.5(b) is license revocation; the presumptive penalty for violating N.J.A.C. 13:2-23.5(c) is a 30-day license suspension. N.J.A.C. 13:2-19.11.

On December 5, 2017, Petitioner filed a motion for summary decision with the Director of the Division seeking revocation of the license. *See* N.J.A.C. 1:1-12.5. On January 8, 2018, Respondent filed its brief in opposition after obtaining the consent of Petitioner for a two-week extension to respond. On January 23, 2018, Petitioner filed its response.

After a thorough examination of the entire record, I FIND the following facts UNDISPUTED:

The charges against the three Patel brothers stemmed from an undercover narcotics investigation between February and May 2016 at the Bellmawr Laundromat – located directly across

¹ "Pb1" refers to Petitioner's brief in support of its motion for summary decision dated December 5, 2017; "Rb" refers to Respondent's brief in opposition to Petitioner's motion for summary decision dated January 8, 2018; "Pb2" refers to Petitioner's brief in response to Respondent's opposition dated January 22, 2018.

the street from Johnnie's, the licensed premises – conducted by a Detective and an Undercover Law Enforcement Officer (“UCO”) of the Camden County Prosecutor’s Office based on information that prescription drugs, crack cocaine and heroin were being sold inside the Laundromat. (Pb1:Exhibit 6).

On February 29, 2016, the first day of the undercover operation, the Detective and the UCO conducted surveillance of the Laundromat. The purpose of the operation was to make contact with any buyers within the Laundromat. Upon entering the business, the Detective and the UCO both recognized Armando Rosario, also known as “Bolo,” who worked there. They made contact with Mr. Rosario and the UCO asked him if he had Percocet. Mr. Rosario said that he would have the “percs” on Friday, March 4, 2016, and to call him. Mr. Rosario gave the UCO his contact information. The UCO asked Mr. Rosario if he had “D” (heroin). Mr. Rosario said he knew of a man who comes into the Laundromat who has heroin and powder cocaine. When the UCO asked for this man’s phone number, Mr. Rosario replied that he would provide it. Ibid.

On Friday, March 4, 2016, the UCO again went into the Laundromat. The purpose of this operation was to purchase prescription drugs from Mr. Rosario. Upon entering the Laundromat, the UCO greeted Mr. Rosario who then asked the UCO, “how many?” The UCO motioned “four” by extending four fingers. The UCO handed Mr. Rosario U.S. currency for the drugs and, after taking money from another individual in the Laundromat, Mr. Rosario walked across the street and entered Johnnie’s Liquor Store. In a few minutes, Mr. Rosario emerged. He first went to a vehicle where the other individual from the Laundromat was sitting and handed him a small object. Mr. Rosario then approached the UCO and handed the UCO four white pills later confirmed to be Oxycodone. Ibid.

On March 10, 2016, the UCO observed an individual give Mr. Rosario money in the parking lot of the Laundromat. Then, the UCO and Mr. Rosario greeted each other outside the Laundromat

and the UCO gave him \$40.00 in U.S. currency. Mr. Rosario walked across the street to Johnnie's Liquor Store and entered the establishment. In a few minutes, Mr. Rosario emerged and gave a small object to the individual from whom he had just received money, and then approached the UCO and handed the UCO four white pills, later confirmed to be Oxycodone. Ibid.

On March 26, 2016, the Camden County Prosecutor's Office obtained and executed a search warrant for Johnnie's. Ibid. The following property was seized from the private back office of Johnnie's: three hundred sixty-eight (368) pills including two hundred fifty-nine (259) of the opioid drugs Oxycodone, Roxicet and Tramadol,^{2 3} and fifty (50) Cyclobenzaprine⁴ and fifty-nine (59) Cyproheptadine⁵; \$13,732.93 in U.S. currency (\$12,148.00 in paper bills and \$1,584.93 converted from coins); a security system hard drive with a Monitor and a computer hard drive from Johnnie's; an I-Phone; one (1) business card for Pradip N. Patel, M.D. (Family Medicine); six (6) bank bags;

² Under the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.), Oxycodone, Roxicet (oxycodone and acetaminophen) and Tramadol are narcotics and controlled dangerous substances.

³ The Drug Enforcement Administration (DEA) classifies drugs, substances and certain chemicals used to make drugs into five (5) distinct categories or schedules, depending upon the drug's acceptable medical use and potential for abuse or dependency. Schedule I has the highest potential for abuse and severe psychological and/or physical dependence. The abuse rate is a determinate factor in the scheduling of the drug. Schedule II drugs, substances or chemicals are defined as drugs with high potential for abuse, with use potentially leading to severe psychological or physical dependence and are considered dangerous; Schedule IV drugs, substances or chemicals have a low potential for abuse and low risk of dependence.

The DEA defines Oxycodone (Schedule II), Roxicet (Schedule II) and Tramadol (Schedule IV) as narcotics, and controlled and dangerous substances. <https://www.dea.gov/druginfo/ds.shtml>; https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf (last visited September 5, 2018)

⁴ Cyclobenzaprine is a prescription muscle relaxant. <https://www.drugs.com/cyclobenzaprine.html> (last visited September 5, 2018)

⁵ Cyproheptadine is a prescription antihistamine. <https://www.drugs.com/cdi/cyproheptadine-tablets.html> (last visited September 5, 2018)

and papers with the name “Bolo,” telephone numbers, and dollar amounts written on them. (Pb1:Exhibit 7).

On that same date, the three Patel brothers were criminally charged with 2nd and 3rd Degree CDS charges. (Pb1:Exhibit 9). The Belmawr Prosecutor’s Office filed criminal charges against the three Respondents alleging the following: 1) Respondents knowingly or purposely possessed or controlled with intent to distribute Oxycodone, specifically by being in possession of over one (1) ounce of Oxycodone during a narcotics search warrant execution, in violation of N.J.S.A. 2C:35-5B(4) (a crime of the second degree); 2) Respondents knowingly possessed a CDS or a controlled substance analog classified in Schedules I, II, III or IV that was not obtained directly, or pursuant to valid prescription or order from the practitioner, specifically by being in possession of more than one (1) ounce of Oxycodone during a narcotics search warrant execution, in violation of N.J.S.A. 2C:35-10A(1) (a crime of the third degree); and 3) Respondents distributed, dispensed or possessed with intent to distribute or dispense a CDS or controlled substance analog while within five hundred (500) feet of school zone, public housing or park, specifically by possessing Oxycodone within five hundred (500) feet of Annunciation School, in violation of N.J.S.A. 2C:35-7A (a crime of the third degree.) (Pb1:Exhibit 9). The three Patel brothers were arrested.

Subsequently, the three brothers made voluntary sworn statements to two Detectives in the Camden County Prosecutor’s Office. (Pb1:Exhibit 8; Exhibit 12; Exhibit 13). Each brother conceded to having knowledge that Mr. Rosario – whom they knew to be a drug dealer – used their licensed premises for his criminal drug enterprise by bringing U.S. currency into Johnnie’s, retrieving drugs (that Mr. Rosario stored on their premises) from the brothers in exchange for U.S. currency, and then selling the drugs to individuals in the community. (Pb1:Exhibit 8 at 8-17; Pb1:Exhibit 12 at 10, 16, 18-20, 22; Pb1:Exhibit 13 at 18-26).

Significantly, during his sworn statement, Dhananjaya Patel provided details of the drug enterprise. He admitted to conducting illegal activities on the licensed premises for about six months, specifically, selling drugs out of Johnnie's to supplement the brothers' incomes. (Pb1:Exhibit 8 at 8-33). The drugs were provided by Mr. Rosario who used the Laundromat as his base of operation. (Pb1:Exhibit 8 at 14-16). Mr. Rosario would interact with individuals there, take their orders for drugs, and collect their money. (Pb1:Exhibit 8 at 5-6, 17). He would cross the street to Johnnie's, give the money to one of the Patel brothers, who then gave Mr. Rosario the requested drugs that were stored in the back office. (Pb1:Exhibit 8 at 8, 12-13). Mr. Rosario would exit Johnnie's and deliver the drugs to his customers. (Pb1:Exhibit 8 at 17).

Dhananjaya Patel admitted that Mr. Rosario would purchase the drugs using funds supplied by the Patel brothers. (Pb1:Exhibit 8 at 26). The three brothers and Mr. Rosario would share in the profits. (Pb1:Exhibit 8 at 22-23). According to Dhananjaya Patel, the brothers had a "mutual agreement" with Mr. Rosario about how the profits were to be shared. (Pb1: Exhibit 8 at 19). For example, if a pill cost the customer \$10.00, the Patel brothers received \$2.00 and Mr. Rosario received \$8.00. (Pb1:Exhibit 8 at 18).

In its brief in response to Petitioner's motion for summary decision, Respondent alleges that the three Patel brothers were admitted into the PTI (Pre-Trial Intervention) Program, which provides defendants, generally first-time offenders, with opportunities for alternatives to the traditional criminal justice process of ordinary prosecution. The Patel brothers were not required to enter a guilty plea prior to entering the program. (Rb:1).

On October 24, 2017, the Court dismissed all criminal charges against Rakesh Patel who successfully completed the PTI Program. (Rb:Exhibit A). Respondents allege that Dhananjaya Patel and Jalat Patel also successfully completed their respective PTI Programs but substantiation of this was not found in the record. (Rb:Exhibit B).

STANDARD FOR SUMMARY DECISION

N.J.A.C. 1:1-12.5(b) sets forth the general standard by which a motion for summary decision shall be decided in an administrative proceeding. Summary decision should be granted where the pleading and affidavits “show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). Once the moving party presents sufficient evidence in support of the motion, the opposing party must proffer affidavits setting forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Ibid.; Contini v. Board of Education of Newark, 286 N.J. Super. 106, 121-22 (App. Div. 1995) certif. denied, 145 N.J. 372 (1996).

It is well-established that when the moving party demonstrates a *prima facie* right to summary judgment, the burden shifts to the opponent to show by competent evidence that a genuine issue of material fact exists. Robbins v. Jersey City, 23 N.J. 229, 241 (App. Div. 1957); James Talcott, Inc., v. Schulman, 82 N.J. Super. 438, 443 (App. Div. 1964). Therefore, in the absence of “legally competent evidence” demonstrating specific material facts in dispute, no evidentiary hearing is required, and summary judgment will be granted. Contini, supra, 286 N.J. Super. at 116-21.

The summary decision standard is substantially the same as that governing a motion for summary judgment under R. 4:46-2(c) of the New Jersey Court Rules. Frank v. Ivy Club, 228 N.J. 40, 62 (App. Div. 1988), rev'd on unrelated grounds, 120 N.J. 73 (1990). Under this standard, a court or agency must decide “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 523 (1995). Disputed facts “of an insubstantial nature” will not defeat a motion for summary judgment. Id. at 529. The test to be applied is whether the evidence is “‘so one-sided that one party must prevail as a matter of law,’ the trial court should not

hesitate to grant summary judgment.” Id. at 533, 540, quoting Anderson v. Liberty Lobby, 477 U.S. 242, 251-52 (1986).

The motion judge must apply the evidentiary standard of proof that would apply at trial on the merits. Brill, supra, 142 N.J. at 533-34. “[T]he usual burden of proof for establishing claims before state agencies in contested administrative adjudications is a fair preponderance of the evidence.”⁶ In re Polk, 90 N.J. 550, 560 (1982); N.J.R.E. 101(b)1.

The purpose of summary judgment is twofold: to encourage trial courts to grant summary judgment when proper circumstances present themselves, but not to shut out deserving litigants from his or her trial when those circumstances are not present. Brill, supra, 142 N.J. at 540-41. In order to decide a motion for summary judgment, the decision maker must engage in a “searching review” of the record in order to determine whether there exists a genuine issue of material fact requiring disposition at trial. Millison v. E.I. DuPont de Nemours & Co., 101 N.J. 161, 167 (1985).

After conducting an extensive review of the record, I FIND that genuine issues of material fact do not exist, such that I GRANT Petitioner’s motion for summary decision.

LEGAL ANALYSIS

In this case, the applicable law imposes a strict liability standard on the liquor license for the acts of owners and their employees. N.J.A.C. 13:2-23.28(a) and (c). As the undisputed evidence demonstrates by a fair preponderance, the Patel brothers engaged in illegal drug activity in or upon the licensed premises, and are, therefore, in violation of N.J.A.C. 13:2-23.5(b). Not only is revocation the presumptive penalty for such a violation, it is the appropriate penalty as well. *See* N.J.A.C. 13:2-19.11(i)(Penalty Schedule).

⁶ A preponderance of the evidence denotes the “greater weight of the evidence; a superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” Black’s Law Dictionary 547 (2nd ed. 2001). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 274-75 (1958).

This is not a case of first impression. The Division has revoked the liquor licenses of licensees who have engaged in or furthered illegal drug activity on their licensed premises. *See Div. of A.B.C. v. Doug-Kar Corp.*, 92 N.J.A.R. 2d 21(ABC) 1992 (sale of marijuana); *Medina v. Trenton, A.B.C. Bull.* 2301, Item 3 (Aug. 1, 1978)(sale of heroin); *In re Gnewcenski*, *A.B.C. Bull.* 1722, Item 1 (Jan. 17, 1967)(sale of marijuana); and *In re Smithpaul Corp.*, *A.B.C. Bull.* 1777, Item 1 (Dec. 18, 1968)(sale of marijuana).

Here, the three Patel brothers – Jalat, Dhananjaya and Rakesh – are charged with violating N.J.A.C. 13:2-23.5(b), which provides, in relevant part

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. Narcotic drugs;
2. Controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.)

[N.J.A.C. 13:2-23.5(b)1; N.J.A.C. 13:2-23.5(b)2.]

As stated above, the presumptive penalty for violating this regulation is license revocation.

In addition, the three Patel brothers are charged with violating N.J.A.C. 13:2-23.5(c), which provides, in relevant part

(c) No licensee shall allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of or accessible to any illegal activity or enterprise.

The presumptive penalty for violating this regulation is a 30-day suspension.

Respondent does not dispute or deny the facts of this case as presented in Petitioner's moving papers, the contemporaneous reports written by the Detectives from the Camden County Prosecutor's Office, the evidence collected from Johnnie's following the execution of a search warrant, or the detailed sworn statements of the three Patel brothers. Nor does Respondent challenge

the video surveillance of the interior of Johnnie's that shows Mr. Rosario and Dhananjaya Patel exchange money, enter and exit the back office together, and conclude with Mr. Rosario's exit from the office with an open palm displaying a handful of pills. (Pb1:Exhibit 11).

Instead, Respondent argues that the sanction of revocation cannot be imposed without an evidentiary hearing for the following three reasons:

- 1) Respondents have neither admitted guilt nor been found guilty of the criminal charges by a court of law. Also, Respondents have been admitted into the PTI Program and upon successful completion of the Program, the charges against them will be dismissed;
- 2) A hearing is required to allow Respondents to challenge the hearsay documents from the criminal case upon which the Division is relying; and
- 3) Because the license is owned by a corporation – Rakesh, Inc. – each of the three corporate officers should be evaluated independently to determine the appropriate penalty for each officer.

[Rb:3-5; See Country Hearth v. Old Bridge Township Council, 221 N.J. Super. 293 (App. Div. 1987).]

All of these arguments are unavailing. First, it is not a prerequisite that a licensee admits his/her guilt in criminal court or that a licensee is criminally convicted prior to the imposition of the presumptive penalty of license revocation for the violation of N.J.A.C. 13:2-23.5. See N.J.A.C. 13:2-19.11(i). Indeed, N.J.A.C. 13:2-23.5 states that “No licensee shall allow, permit or suffer in or upon the licensed premises” any unlawful activity involving illicit drugs. Licensees are held strictly liable for such violations, “rendering irrelevant whether the licensee had knowledge of the unlawful acts on the licensed premises.” N.J.A.C. 13:2-23.28; Div. of A.B.C. v. Maynard's, Inc., 192 N.J. 158, 180, 185 (2007)(discussing the meaning, purpose and intent of “allow, permit or suffer”).

Moreover, that the three Patel brothers have entered and successfully completed the PTI Program, or had or may have had the criminal charges against them dismissed, is irrelevant to the

filing of ABC charges against them and the imposition of a presumptive penalty. The evidence shows that the three Patel brothers acknowledged in sworn statements before Detectives from the Camden County Prosecutor's Office that they were aware of the illegal drug activity – including drug distribution – that was conducted on their licensed premises. (Pb1:Exhibit 8 at 12-23, 32-33; Pb1:Exhibit 12 at 19, 21-22; Pb1:Exhibit 13 at 17-18, 21- 22, 25-27).

Significantly, Dhananjaya Patel supplied detailed information about the enterprise and how the brothers funded the operation and divided the proceeds among themselves and Mr. Rosario. (Pb1:Exhibit 8 at 22-23). While these statements were not made in a criminal court setting, Respondents fail to offer any opposition demonstrating specific material facts in dispute justifying an evidentiary hearing.

Second, a hearing is not required to allow Respondents to challenge the evidence relied upon by the Division. The Division properly relied upon the evidence adduced during the criminal investigation. N.J.A.C. 1:1-15.5 governs the admissibility of hearsay evidence in administrative proceedings under the Residuum Rule. In pertinent part

hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally its reliability.

[N.J.A.C. 1:1-15.5(a).]

Continuing, the regulation states, “Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5(b). See Weston v. State, 60 N.J. 36, 50 (1972)(standing for the proposition that while “it is common practice for administrative agencies to receive hearsay evidence . . . fact finding or legal

determination cannot be based upon hearsay alone . . . there must be a residuum of legal and competent evidence in the record to support it.”)

Here, all of the evidence in the record upon which the Division relied in charging the Respondents is reliable and admissible. None of the evidence is arbitrary. This evidence includes: the Camden County Prosecutor’s Office’s Detectives’ contemporaneous reports detailing their undercover operation, the three Patel brothers’ detailed sworn statements made to the Detectives that explained the drug activity on the licensed premises and their involvement in it, and the video surveillance of the illegal drug activity by Dhananjaya Patel and Mr. Rosario on the licensed premises that substantiated the Detectives’ reports and the brothers’ sworn statements.

Not only is this evidence reliable and admissible, Respondents offer no counterstatement of facts or legal or factual bases to challenge any of the evidence to justify an evidentiary hearing. As stated previously, an evidentiary hearing is mandated only where there are disputed adjudicatory facts. Contini, supra, 286 N.J. Super. at 120.

Regarding the sworn statements of the three Patel brothers, their concessions made to the Detectives have the indicia of reliability because they fall under the exception to the hearsay rule as “statements against interest.” New Jersey Rules of Evidence (N.J.R.E.) 803(c)25. The rule provides that

a statement which was at the time of its making so far contrary to the declarant’s pecuniary, proprietary, or social interest, or so far tended to subject declarant to civil or criminal liability, or to render invalid declarant’s claim against another, that a reasonable person in declarant’s position would not have made the statement unless the person believed it to be true.

It can reasonably be concluded that any “reasonable person” would not have made sworn statements to the Camden County Prosecutor’s Office about knowledge of and participation in an illegal drug enterprise that would certainly subject the person to punishment unless these concessions were true.

In sum, I FIND that the totality of the evidence before me is legal and competent evidence, and admissible.

Third, Respondents' reliance upon Country Hearth in support of their argument that each of the three brothers as equal owners of the license should be evaluated independently to impose the appropriate penalty for each owner is misplaced. (Rb:3-4; Country Hearth, *supra*, 221 N.J. Super. at 294-300). This case is distinguishable from Country Hearth.

In Country Hearth, the issuing authority revoked appellant Joie Sorrentino's license and denied her application for its renewal based upon the unlawful drug activities off the licensed premises committed by her husband Thomas Sorrentino, the former president and 60% shareholder of Country Hearth, Inc., the entity owning the license. *Id.* at 294. Prior to his arrest and conviction for several drug crimes, Thomas had transferred his shares in Country Hearth, Inc. to his wife Joie, who then became owner of all of the shares of the license. *Id.* at 296. Following his drug conviction, the Division issued charges against Thomas for violations of N.J.S.A. 33:1-25, which prohibits the issuance of a license to an individual convicted of a crime of moral turpitude, and N.J.A.C. 13:2-23.5, which prohibits a licensee to allow, permit or suffer in or upon the licensed premises any unlawful drug activity. *Id.* at 295. Subsequently, the issuing authority revoked the license and denied the renewal application. *Id.* at 299.

On appeal, the Appellate Division reversed and remanded the matter to the Division because it found that 1) the drug activity occurred off the licensed premises (rendering the revocation based upon N.J.A.C. 13:2-23.5 erroneous), and 2) Joie had never participated in operating the business and had no knowledge of her husband's criminal activity. *Id.* at 296, 299-300. In fact, by the time the issuing authority revoked the license, Thomas was no longer a stockholder or officer of Country Hearth, Inc., and none of the stockholders or officers had been convicted of a disqualifying crime, making the revocation based upon N.J.S.A. 33:1-25 erroneous as well. *Id.* at 296.

In contrast, the three Patel brothers, equal shareholders of the licensed entity, Rakesh, Inc., were complicit in the illegal drug enterprise with Mr. Rosario – whom they knew to be a drug dealer – and engaged in this activity on their licensed premises. *See Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981)(license revoked because major stockholder of the license was found in possession of cocaine on the licensed premises from which drug trafficking could be inferred). Because all of the shareholders of Rakesh, Inc. violated the provisions of N.J.A.C. 13:2-23.5(b) – violations of which warrant license revocation – Respondents' reliance upon Country Hearth to justify an evidentiary hearing to determine each brother's penalty is unavailing.

From a public policy perspective, the Division's practice is to vigorously prosecute licensees who engage in illegal drug activity on their licensed premises. As the Director stated in Doug-Kar Corp.,

[t]he effects of the sale of controlled dangerous substances in our society has been thoroughly documented as to economically, financially and morally. Both the Federal and State government have declared a 'War on Drugs' and have spent large resources to locate, arrest, and convict those individuals who chose to engage in this vile and base trade.

[Doug-Kar Corp., *supra*, 92 N.J.A.R. 2d at 21, 26.]

In fact, the Division's strong anti-drug position mirrors the State's position on the drug crisis. For example, former Governor Chris Christie launched State initiatives and programs to combat opioid and drug addiction.⁷ Governor Phil Murphy has committed \$100 million to continue the fight against drugs and address the burgeoning opioid epidemic in New Jersey through a strategic, coordinated multi-agency effort.⁸ Governor Murphy stated that his plans are an "all-in effort" to

⁷ "Governor Christie Signs Executive Order Declaring Opioid Drug Abuse a Public Health Crisis," (January 17, 2017), <https://morriscountynj.gov/category/press-releases/>.

⁸ "Governor Murphy Advances \$100 Million Commitment to Tackle New Jersey's Opioid Crisis," State of New Jersey: Governor Phil Murphy, (2018), https://www.nj.gov/governor/news/news/562018/approved/20180403a_opioid_crisis.shtml.

“break the back” of the crisis that claimed the lives of over 2,000 New Jersey residents in 2016.

Ibid.

Complementing these vital efforts, Attorney General Gurbir S. Grewal has identified that tackling drug addiction is one of his four key priorities as Attorney General. To this end, Attorney General Grewal created a new office within the Department of Law and Public Safety – the New Jersey Coordinator for Addiction Response and Enforcement Strategies (NJ-CARES) – that will coordinate the Department’s responses and develop comprehensive strategies to address the drug crisis facing our communities and create partnerships with other agencies and groups. Ibid. Thus, all of the forces in the State are united in combating this catastrophic epidemic in our communities.

Finally, Respondents request a hearing on the issue of the presumptive penalties for their violations of N.J.A.C. 13:2-23.5. They propose that the Director consider a decrease or a fine in lieu of the presumptive penalties. (Rb:4-5). Respondents point to N.J.A.C. 13:2-19.13 that states in pertinent part

- (a) The penalties set forth in the penalty schedule, at N.J.A.C. 13:2-19.11(i), may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances.
- (b) Some of the factors that the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings or violations about compliance problems, efforts to conceal violations, age of customers and that the incident that gave rise to the violation resulted in death or substantial injury.

[N.J.A.C. 13:2-19.13.]

Absent aggravating or mitigating circumstances, the presumptive penalty for each of the three (3) violations of N.J.A.C. 13:2-23.5(b) is revocation of the license. N.J.A.C. 13:2-19.11. The

presumptive penalty for each of the nine (9) violations of N.J.A.C. 13:2-23.5(c) is a 30-day suspension of the license per violation. Ibid.

Respondents have the “burden of demonstrating mitigating circumstances.” N.J.A.C. 13:2-19.13(c). Here, however, Respondents merely cited to N.J.A.C. 13:2-19.13 and Maynard’s, supra, 192 N.J. at 164, as support for the Director’s reconsideration. They failed to demonstrate any specific justifications or circumstances that I should entertain or weigh in consideration of a lesser penalty other than the presumptive penalty of revocation. Moreover, their reliance upon Maynard’s is misplaced. (Rb:4-5).

Our Supreme Court in Maynard’s found that an employer who operated a restaurant and bar was strictly liable for the criminal acts committed by an employee on the licensed premises. Maynard’s, supra, 192 N.J. at 161, 174. In that case, an employee sold cocaine on several occasions to an undercover law enforcement officer on the licensed premises. Id. at 161. The Court also found that mitigating circumstances, namely, the “state of mind of a licensee in allowing, permitting or suffering an illicit act to occur on his licensed premises,” are relevant to the quantum of penalty that is imposed. Id. at 185.

The Maynard’s Court pointed to mitigating factors that should be considered regarding the imposition of a penalty imposed against the licensee. These include: the licensee was “in no way involved in the violations;” the licensee was committed “to operate its establishment lawfully and responsibly,” and in fact, had “engaged in extraordinary efforts to detect and eradicate illegal activities of any kind on its premises;” the licensee and its management and staff were “proactive and sensitive to the rules and regulations promulgated by the [State] ABC;” the licensee was a well-respected member of the community; the character of the licensee was such as “to indicate that the occurrence of another offense is unlikely;” and, no aggravating factors were found. Id. at 171-72. The Court emphasized, “In the end, the penalty to be imposed must be proportional to the relevant

facts.” Id. at 186. Given the totality of the circumstances, the Court found that the Director should consider exercising lenity and a reduction in the presumptive penalty. Id. at 188.

Here, I FIND that there are no mitigating factors; however, there are significant aggravating factors. The three Patel brothers have committed grave violations of ABC regulations by being active participants and partners in the drug activity conducted on their licensed premises. They acted intentionally and purposefully over a protracted period of time for their own pecuniary gain without regard for the health and welfare of the community. The illegal drug activity on the licensed premises was not a one-time occurrence but rather an ongoing illegal enterprise. Thus, the facts here are wholly dissimilar to the facts in Maynard’s.

But for the perseverance of the Camden County Prosecutor’s Office and their successful undercover operation, it is reasonable to conclude that the illegal drug enterprise would have continued. There is no way to discern the full harm that the Patel brothers – working in conjunction with a known drug dealer – have done to the community.

Therefore, I FIND that the three Patel brothers as licensees do not warrant any such leniency as was afforded the licensee in Maynard’s.

In conclusion, I GRANT Petitioner’s motion for summary decision on all of the twelve charges against the Respondents because the non-moving party, even with all legitimate inferences in their favor, failed to raise a genuine issue of material fact to warrant an evidentiary proceeding, and Petitioner is entitled to judgment as a matter of law. N.J.A.C. 1:1-12.5(b).

After my thorough review of this record, and taking into consideration the totality of the circumstances and aggravating factors, I FIND by a preponderance of the credible evidence that the Patel brothers – acting in a highly egregious, injurious and irresponsible manner – have abused their privilege of holding an alcoholic beverage license in New Jersey. The only appropriate penalty is revocation of Rakesh, Inc.’s license.

Accordingly, it is on this 4th day of October 2018,

ORDERED that Rakesh, Inc., t/a Johnnie's Liquor Store, is guilty of violating N.J.A.C. 13:2-23.5(b), "no licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to narcotic drugs or controlled dangerous substances," on May 26, 2016; and it is further

ORDERED that Rakesh, Inc., t/a Johnnie's Liquor Store, is guilty of violating N.J.A.C. 13:2-23.5(c), "no licensee shall allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of or accessible to any illegal activity or enterprise," on May 26, 2016; and it is further

ORDERED that Plenary Retail Distribution License Number 0404-44-008-003, issued by the governing body of Bellmawr Borough in Camden County to Rakesh, Inc., t/a Johnnie's Liquor Store, located at 834-836 West Browning Road in Bellmawr, New Jersey, is revoked, effective upon the date of this Order; and it is further

ORDERED that Rakesh Patel, Jalat Patel and Dhananjaya Patel, as equal shareholders of Rakesh, Inc., t/a Johnnie's Liquor Store, are ineligible to hold or receive any other license of any kind or class, as defined in N.J.S.A. 33:1-31, for a period of two (2) years from the effective date of the revocation.

A handwritten signature in dark ink, appearing to read "David P. Rible", is written over a horizontal line.

DAVID P. RIBLE

DIRECTOR

ABC